



# Department of Education's Proposed Title IX Regulations

January 7, 2019

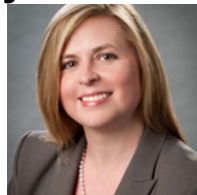
# Agenda

- Introductions and brief background
- Overview of the proposed regulations
- Highlights of some key provisions
- How and when to submit comments



# Speakers

- Moderator:
  - Sheri Schwab - Office for Institutional Equity and Diversity
- Panelists:
  - Betsy Lanzen – Office of General Counsel
  - Thomas Hardiman – Office of Student Conduct
  - Janine Kossen – Women’s Center
  - Dr. David Elrod – Office for Institutional Equity and Diversity



## Title IX: 20 USC §1681(b)

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving financial assistance.”



# Overview

- In November, as part of the federal rulemaking process, the Department of Education (DOE) released for public comment new proposed Title IX regulations.
- The 60-day official public comment period runs from November 29, 2018 to January 28, 2019.
- Because DOE must review all comments received before proceeding, it is unclear when the proposed rules could actually become law.





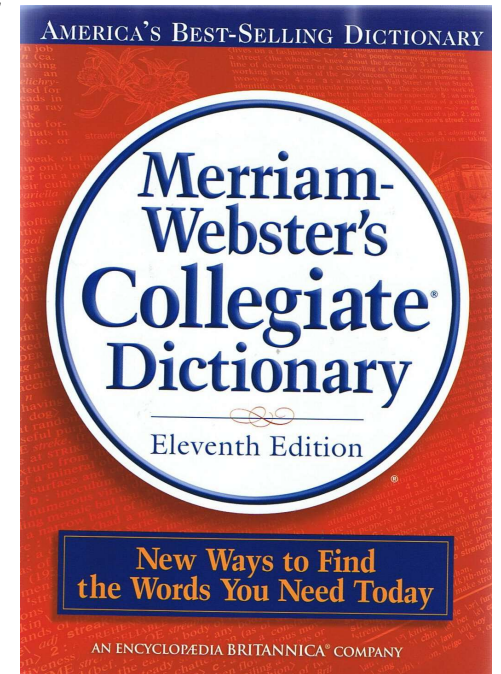
# Highlights of Key Proposed Provisions

- Definition of Sexual Harassment
- Geography/Jurisdiction
- Obligated Response
- Live Hearing and Cross-Examination
- Standard of Evidence
- Informal Resolutions and Mediation

# Definition of Sexual Harassment

## Current:

- Sexual harassment is unwelcome conduct of a sexual nature that is sufficiently **severe, persistent, or pervasive** to limit a student's ability to participate in or benefit from the education program or to create a hostile or abusive educational environment.
- Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.



# Definition of Sexual Harassment

## Proposed:

Defined to include these three categories:

- (1) **Quid pro quo harassment** (university employee conditioning aid, benefit or service on individual's participation in unwelcome sexual conduct)
- (2) Unwelcome conduct on the basis of sex that is **so severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the recipient's education program or activity
- (3) Clery definition of **sexual assault**: rape, statutory rape, fondling or incest



# Geography/Jurisdiction

## Proposed:

- Required to respond to harassment that occurred within the school's **own program or activity**.
- The DOE Summary notes that this is not intended to create an artificial bright-line between harassment occurring “on campus” versus “off campus.”
- Will be a fact-specific inquiry and will consider *factors* like whether school owns the property; exercises oversight, supervision, or discipline over the location or participants; or funds, sponsors, promotes, or endorses event
- Applies only to conduct in the US



# Obligated Response

## Current:

- University obligated to respond to a Title IX complaint if a responsible employee “**knew, or in the exercise of reasonable care should have known**” about the harassment.
- Responsible employees include those with the authority to take action to redress the harassment, who have the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or individuals who a student could reasonably believe have this authority or responsibility.

## Obligated Response

### Proposed:

University's obligation to respond to a Title IX complaint is limited to those situations in which:

- University has “**actual knowledge**” of allegations of sexual harassment (written and signed formal complaint describing allegations is given to the Title IX Coordinator or a University official with authority to initiate corrective measures on behalf of the University)
- Conduct occurred in education program or activity of the University



# Cross Examinations

## Current:

- Allowed, but not usually required
- Split among jurisdictions

## Proposed:

- Must offer live hearing where parties have opportunity to present witnesses and evidence
- Must allow cross-examination of parties and witnesses



# Cross Examinations

## Proposed:

- Cross-examination must be conducted by the party's advisor of choice (who may be an attorney)
- Cannot ask about survivor's prior sexual history, except in some limited circumstances (such as establishing consent)
- Parties can be in separate rooms during cross



## Standard of Evidence

### Current:

May use either clear and convincing evidence standard  
OR preponderance of the evidence (more likely than not)

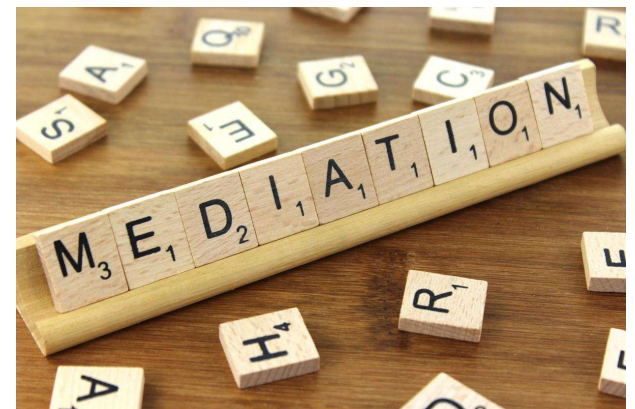
### Proposed:

- May use either:
  - clear and convincing evidence standard, OR
  - preponderance of the evidence, *but only if same standard used for all conduct charges which have the same maximum penalties/sanctions.*
- Same standard of evidence must apply for students and employees, including faculty

# Informal Resolutions

Proposal allows and encourages informal resolutions (such as mediation or restorative justice practices) if:

- Process occurs prior to a final determination at a hearing,
- Is voluntary,
- Indicates any consequences resulting from informal resolution (binding, preclude formal complaint for same conduct), and
- Is agreed to in writing by both parties.



# Tips for Providing Public Comments

- **Carefully review the proposed regulations and note any areas of concern.**
- **Write individual comments.**
- **Don't worry about writing a dissertation.**
- **Use clear headings to organize your comments.**
- **Include personal stories and statements.**
- **Give specific examples of the impact the proposed regulations will have.**





# Tips for Providing Public Comments

- **Submit your response electronically.**
- **Cite research and best practices.**
- **Offer recommendations.**
- **Don't use inflammatory language.**
- **Mobilize others to write comments.**



Make a difference. Submit your comments and let your voice be heard.

SEARCH for: Rules, Comments, Adjudications or Supporting Documents:

ED-2018-OCR-0064

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Comments Due Soon

- Today (16)
Next 3 Days (39)
Next 7 Days (152)
Next 15 Days (321)
Next 30 Days (570)
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- Today (71)
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Unable to submit a comment?

FAA Section 333

APIs for Developers



## Title IX of the Education Amendments of 1972

Docket Folder Summary [View all documents and comments in this Docket](#)

Docket ID: ED-2018-OCR-0064 Agency: Department of Education (ED)

### Summary:

The Secretary plans to issue a notice of proposed rulemaking to clarify the obligations of recipients of Federal financial assistance in redressing sex discrimination, including complaints of sexual misconduct, and the procedures by which they must do so.

RIN: 1870-AA14 Impacts and Effects: None CFR Citation: 34 CFR 106 Priority: Other Significant

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50,306  
Comments Received\*

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### Regulatory Timeline

Pre Rule

Proposed Rule  
Current Stage

Final Rule

### Agency Contact

Brittany Bull  
Attorney Advisor  
ED

### Primary Documents [View All \(1\)](#)

PR

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal...

Comment Now!

Proposed Rule Posted: 11/29/2018 ID: ED-2018-OCR-0064-0001

Due Jan 28, 2019 11:59 PM ET

### Supporting Documents

No documents available.

### Comments [View All \(5,769\)](#)



The proposed changes would weaken Title IX and make campuses less safe. I strongly urge you to keep the current regulations regarding sexual harrassment and..."

This Proposed Rule document was issued by the **Department of Education (ED)**

For related information, [Open Docket Folder](#) 

**Comment Now!**

Due Jan 28 2019, at 11:59 PM ET

## Action

Notice of proposed rulemaking.

## Summary

The Secretary of Education proposes to amend regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The proposed regulations would clarify and modify Title IX regulatory requirements pertaining to the availability of remedies for violations, the effect of Constitutional protections, the designation of a coordinator to address sex discrimination issues, the dissemination of a nondiscrimination policy, the adoption of grievance procedures, and the process to claim a religious exemption. The proposed regulations would also specify how recipient schools and institutions covered by Title IX (hereinafter collectively referred to as recipients or schools) must respond to incidents of sexual harassment consistent with Title IX's prohibition against sex discrimination. The proposed regulations are intended to promote the purpose of Title IX by requiring recipients to address sexual harassment, assisting and protecting victims of sexual harassment and ensuring that due process protections are in place for individuals accused of sexual harassment.

## Dates

We must receive your comments on or before January 28, 2019.

## Addresses

Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email, or comments submitted after the comment period closes. To ensure that we do not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), we strongly encourage you to convert the PDF to "print-to-PDF" format, or to use some other commonly-used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the U.S. Department of Education (the Department) to electronically search and copy certain portions of your submissions.

*Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using *Regulations.gov*, including instructions for finding a rule on the site and submitting comments, is available on the site under "How to use *Regulations.gov*" in the Help section.

ID: ED-2018-OCR-0064-0001

View original printed format: 

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## Document Information

Date Posted:  
Nov 29, 2018

RIN:  
1870-AA14

CFR:  
34 CFR Part 106

Federal Register Number:  
2018-25314

[Show More Details](#) 

## Comments

**50,194**  
Comments Received\*

*The proposed changes would weaken Title IX and make*

1 Your Information

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- I am submitting on behalf of a third party

Category (Required)

Select a Category... ▼